

111TH CONGRESS
1ST SESSION

S. 973

To amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2009

Mr. NELSON of Florida (for himself, Mr. REID, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Resident Physician
5 Shortage Reduction Act of 2009”.

6 **SEC. 2. DISTRIBUTION OF ADDITIONAL RESIDENCY POSI-**
7 **TIONS.**

8 (a) IN GENERAL.—Section 1886(h) of the Social Se-
9 curity Act (42 U.S.C. 1395ww(h)) is amended—

1 (1) in paragraph (4)(F)(i), by striking “para-
2 graph (7)” and inserting “paragraphs (7) and (8)”;

3 (2) in paragraph (4)(H)(i), by striking “para-
4 graph (7)” and inserting “paragraphs (7) and (8)”;
5 and

6 (3) by adding at the end the following new
7 paragraph:

8 “(8) DISTRIBUTION OF ADDITIONAL RESIDENCY
9 POSITIONS.—

10 “(A) ADDITIONAL RESIDENCY POSI-
11 TIONS.—

12 “(i) REDUCTION IN LIMIT BASED ON
13 UNUSED POSITIONS.—

14 “(I) IN GENERAL.—The Sec-
15 retary shall reduce the otherwise ap-
16 plicable resident limit for a hospital
17 that the Secretary determines had
18 residency positions that were unused
19 for all 5 of the most recent cost re-
20 porting periods ending prior to the
21 date of enactment of this paragraph
22 by an amount that is equal to the
23 number of such unused residency po-
24 sitions.

1 “(II) EXCEPTION FOR RURAL
2 HOSPITALS AND CERTAIN OTHER HOS-
3 PITALS.—This subparagraph shall not
4 apply to a hospital—

5 “(aa) located in a rural area
6 (as defined in subsection
7 (d)(2)(D)(ii));

8 “(bb) that has participated
9 in a voluntary reduction plan
10 under paragraph (6); or

11 “(cc) that has participated
12 in a demonstration project ap-
13 proved as of October 31, 2003,
14 under the authority of section
15 402 of Public Law 90–248.

16 “(ii) NUMBER AVAILABLE FOR DIS-
17 TRIBUTION.—The number of additional
18 residency positions available for distribu-
19 tion under subparagraph (B) shall be an
20 amount that the Secretary determines
21 would result in a 15 percent increase in
22 the aggregate number of full-time equiva-
23 lent residents in approved medical training
24 programs (as determined based on the
25 most recent cost reports available at the

time of distribution). One-third of such number shall only be available for distribution to hospitals described in subclause (I) of subparagraph (B)(ii) under such subparagraph.

“(B) DISTRIBUTION.—

“(i) IN GENERAL.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after the date of enactment of this paragraph. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the number of additional residency positions available for distribution under subparagraph (A)(ii).

“(ii) DISTRIBUTION TO HOSPITALS ALREADY OPERATING OVER RESIDENT LIMIT.—

“(I) IN GENERAL.—Subject to subclause (II), in the case of a hospital in which the reference resident

1 level of the hospital (as specified in
2 clause (iii)) is greater than the other-
3 wise applicable resident limit, the in-
4 crease in the otherwise applicable resi-
5 dent limit under this subparagraph
6 shall be an amount equal to the prod-
7 uct of the total number of additional
8 residency positions available for dis-
9 tribution under subparagraph (A)(ii)
10 and the quotient of—

11 “(aa) the number of resident
12 positions by which the reference
13 resident level of the hospital ex-
14 ceeds the otherwise applicable
15 resident limit for the hospital;
16 and

17 “(bb) the number of resident
18 positions by which the reference
19 resident level of all such hospitals
20 with respect to which an applica-
21 tion is approved under this sub-
22 paragraph exceeds the otherwise
23 applicable resident limit for such
24 hospitals.

1 “(II) REQUIREMENTS.—A hos-
2 pital described in subclause (I)—

3 “(aa) is not eligible for an
4 increase in the otherwise applica-
5 ble resident limit under this sub-
6 paragraph unless the amount by
7 which the reference resident level
8 of the hospital exceeds the other-
9 wise applicable resident limit is
10 not less than 10 and the hospital
11 trains at least 25 percent of the
12 full-time equivalent residents of
13 the hospital in primary care and
14 general surgery (as of the date of
15 enactment of this paragraph);
16 and

17 “(bb) shall continue to train
18 at least 25 percent of the full-
19 time equivalent residents of the
20 hospital in primary care and gen-
21 eral surgery for the 10-year pe-
22 riod beginning on such date.

23 In the case where the Secretary deter-
24 mines that a hospital no longer meets
25 the requirement of item (bb), the Sec-

retary may reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this clause.

“(III) CLARIFICATION REGARDING ELIGIBILITY FOR OTHER ADDITIONAL RESIDENCY POSITIONS.—

Nothing in this clause shall be construed as preventing a hospital described in subclause (I) from applying for additional residency positions under this paragraph that are not reserved for distribution under this clause.

“(iii) REFERENCE RESIDENT LEVEL.—

“(I) IN GENERAL.—Except as otherwise provided in subclause (II), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before the date of enactment of this paragraph, for which a cost report has been settled (or, if not, sub-

mitted (subject to audit)), as determined by the Secretary.

“(II) USE OF MOST RECENT ACCOUNTING PERIOD TO RECOGNIZE EXPANSION OF EXISTING PROGRAM OR ESTABLISHMENT OF NEW PROGRAM.—If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program or the establishment of a new residency training program that is not reflected on the most recent cost report that has been settled (or, if not, submitted (subject to audit)), subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes the additional residents attributable to such expansion or establishment, as determined by the Secretary.

“(C) CONSIDERATIONS IN REDISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident

1 limit is provided under subparagraph (B) (other
 2 than an increase under subparagraph (B)(ii)),
 3 the Secretary shall take into account the dem-
 4 onstrated likelihood of the hospital filling the
 5 positions within the first 3 cost reporting peri-
 6 ods beginning on or after July 1, 2010, made
 7 available under this paragraph, as determined
 8 by the Secretary.

9 “(D) PRIORITY FOR CERTAIN AREAS.—In
 10 determining for which hospitals the increase in
 11 the otherwise applicable resident limit is pro-
 12 vided under subparagraph (B) (other than an
 13 increase under subparagraph (B)(ii)), the Sec-
 14 retary shall distribute the increase to hospitals
 15 based on the following criteria:

16 “(i) The Secretary shall give pref-
 17 erence to hospitals that submit applica-
 18 tions for new primary care and general
 19 surgery residency positions. In the case of
 20 any increase based on such preference, a
 21 hospital shall ensure that—

22 “(I) the position made available
 23 as a result of such increase remains a
 24 primary care or general surgery resi-
 25 dency position for not less than 10

1 years after the date on which the posi-
2 tion is filled; and

3 “(II) the total number of primary
4 care and general surgery residency po-
5 sitions in the hospital (determined
6 based on the number of such positions
7 as of the date of such increase, includ-
8 ing any position added as a result of
9 such increase) is not decreased during
10 such 10-year period.

11 In the case where the Secretary determines
12 that a hospital no longer meets the re-
13 quirement of subclause (II), the Secretary
14 may reduce the otherwise applicable resi-
15 dent limit of the hospital by the amount by
16 which such limit was increased under this
17 paragraph.

18 “(ii) The Secretary shall give pref-
19 erence to hospitals that emphasize training
20 in community health centers and other
21 community-based clinical settings.

22 “(iii) The Secretary shall give pref-
23 erence to hospitals in States that have
24 more medical students than residency posi-
25 tions available (including a greater pref-

1 erence for those States with smaller resi-
 2 dent-to-medical-student ratios). In deter-
 3 mining the number of medical students in
 4 a State for purposes of the preceding sen-
 5 tence, the Secretary shall include planned
 6 students at medical schools which have
 7 provisional accreditation by the Liaison
 8 Committee on Medical Education or the
 9 American Osteopathic Association.

10 “(iv) The Secretary shall give pref-
 11 erence to hospitals in States that have low
 12 resident-to-population ratios (including a
 13 greater preference for those States with
 14 lower resident-to-population ratios).

15 “(E) LIMITATION.—

16 “(i) IN GENERAL.—Except as pro-
 17 vided in clause (ii), in no case may a hos-
 18 pital (other than a hospital described in
 19 subparagraph (B)(ii)(I), subject to the lim-
 20 itation under subparagraph (B)(ii)(III))
 21 apply for more than 50 full-time equivalent
 22 additional residency positions under this
 23 paragraph.

24 “(ii) INCREASE IN NUMBER OF ADDI-
 25 TIONAL POSITIONS AVAILABLE FOR DIS-

1 TRIBUTION.—The Secretary shall increase
 2 the number of full-time equivalent addi-
 3 tional residency positions a hospital may
 4 apply for under this paragraph if the Sec-
 5 retary determines that the number of addi-
 6 tional residency positions available for dis-
 7 tribution under subparagraph (A)(ii) ex-
 8 ceeds the number of such applications ap-
 9 proved.

10 “(F) APPLICATION OF PER RESIDENT
 11 AMOUNTS FOR PRIMARY CARE AND NONPRI-
 12 MARY CARE.—With respect to additional resi-
 13 dency positions in a hospital attributable to the
 14 increase provided under this paragraph, the ap-
 15 proved FTE resident amounts are deemed to be
 16 equal to the hospital per resident amounts for
 17 primary care and nonprimary care computed
 18 under paragraph (2)(D) for that hospital.

19 “(G) DISTRIBUTION.—The Secretary shall
 20 distribute the increase to hospitals under this
 21 paragraph not later than 2 years after the date
 22 of enactment of this paragraph.”.

23 (b) IME.—

24 (1) IN GENERAL.—Section 1886(d)(5)(B)(v) of
 25 the Social Security Act (42 U.S.C.

1 1395ww(d)(5)(B)(v)), in the second sentence, is
 2 amended—

3 (A) by striking “subsection (h)(7)” and in-
 4 serting “subsections (h)(7) and (h)(8)”; and

5 (B) by striking “it applies” and inserting
 6 “they apply”.

7 (2) CONFORMING PROVISION.—Section
 8 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
 9 1395ww(d)(5)(B)) is amended by adding at the end
 10 the following clause:

11 “(x) For discharges occurring on or after the
 12 date of enactment of this clause, insofar as an addi-
 13 tional payment amount under this subparagraph is
 14 attributable to resident positions distributed to a
 15 hospital under subsection (h)(8)(B), the indirect
 16 teaching adjustment factor shall be computed in the
 17 same manner as provided under clause (ii) with re-
 18 spect to such resident positions.”.

19 **SEC. 3. COUNTING RESIDENT TIME IN OUTPATIENT SET-**
 20 **TINGS.**

21 (a) GME.—Section 1886(h)(4)(E) of the Social Se-
 22 curity Act (42 U.S.C. 1395ww(h)) is amended—

23 (1) by striking “shall be counted and that all
 24 the time” and inserting “shall be counted and
 25 that—

1 “(i) effective for cost reporting peri-
2 ods beginning before July 1, 2009, all the
3 time”;

4 (2) in clause (i), as inserted by paragraph (1),
5 by striking the period at the end and inserting “;
6 and”; and

7 (3) by inserting after clause (i), as so inserted,
8 the following new clause:

9 “(ii) effective for cost reporting peri-
10 ods beginning on or after July 1, 2009, all
11 the time so spent by a resident shall be
12 counted towards the determination of full-
13 time equivalency, without regard to the
14 setting in which the activities are per-
15 formed, if the hospital continues to incur
16 the costs of the stipends and fringe bene-
17 fits of the resident during the time the
18 resident spends in that setting.”.

19 (b) IME.—Section 1886(d)(5)(B)(iv) of the Social
20 Security Act (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amend-
21 ed—

22 (1) by striking “(iv) Effective for discharges oc-
23 ccurring on or after October 1, 1997” and inserting
24 “(iv)(A) Effective for discharges occurring on or

1 after October 1, 1997, and before July 1, 2009”;
2 and

3 (2) by inserting after subparagraph (A), as in-
4 serted by paragraph (1), the following new subpara-
5 graph:

6 “(B) Effective for discharges occur-
7 ring on or after July 1, 2009, all the time
8 spent by an intern or resident in patient
9 care activities at an entity in a nonhospital
10 setting shall be counted towards the deter-
11 mination of full-time equivalency if the
12 hospital continues to incur the costs of the
13 stipends and fringe benefits of the intern
14 or resident during the time the intern or
15 resident spends in that setting.”.

16 (c) APPLICATION.—The amendments made by this
17 section shall not be applied in a manner that requires re-
18 opening of any settled hospital cost reports as to which
19 there is not a jurisdictionally proper appeal pending as
20 of the date of the enactment of this Act on the issue of
21 payment for indirect costs of medical education under sec-
22 tion 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
23 1395ww(d)(5)(B)) or for direct graduate medical edu-
24 cation costs under section 1886(h) of such Act (42 U.S.C.
25 1395ww(h)).

1 **SEC. 4. RULES FOR COUNTING RESIDENT TIME FOR DIDAC-**
 2 **TIC AND SCHOLARLY ACTIVITIES AND OTHER**
 3 **ACTIVITIES.**

4 (a) GME.—Section 1886(h) of the Social Security
 5 Act (42 U.S.C. 1395ww(h)), as amended by section 3, is
 6 amended—

7 (1) in paragraph (4)(E)—

8 (A) by designating the first sentence as a
 9 clause (i) with the heading “IN GENERAL” and
 10 appropriate indentation and by striking “Such
 11 rules” and inserting “Subject to clause (ii),
 12 such rules”; and

13 (B) by adding at the end the following new
 14 clause:

15 “(ii) TREATMENT OF CERTAIN NON-
 16 HOSPITAL AND DIDACTIC ACTIVITIES.—
 17 Such rules shall provide that all time spent
 18 by an intern or resident in an approved
 19 medical residency training program in a
 20 nonhospital setting that is primarily en-
 21 gaged in furnishing patient care (as de-
 22 fined in paragraph (5)(K)) in non-patient
 23 care activities, such as didactic conferences
 24 and seminars, but not including research
 25 not associated with the treatment or diag-
 26 nosis of a particular patient, as such time

1 and activities are defined by the Secretary,
2 shall be counted toward the determination
3 of full-time equivalency.”;

4 (2) in paragraph (4), by adding at the end the
5 following new subparagraph:

6 “(I) In determining the hospital’s number
7 of full-time equivalent residents for purposes of
8 this subsection, all the time that is spent by an
9 intern or resident in an approved medical resi-
10 dency training program on vacation, sick leave,
11 or other approved leave, as such time is defined
12 by the Secretary, and that does not prolong the
13 total time the resident is participating in the
14 approved program beyond the normal duration
15 of the program shall be counted toward the de-
16 termination of full-time equivalency.”; and

17 (3) in paragraph (5), by adding at the end the
18 following new subparagraph:

19 “(K) NONHOSPITAL SETTING THAT IS PRI-
20 MARILY ENGAGED IN FURNISHING PATIENT
21 CARE.—The term ‘nonhospital setting that is
22 primarily engaged in furnishing patient care’
23 means a nonhospital setting in which the pri-
24 mary activity is the care and treatment of pa-
25 tients, as defined by the Secretary.”.

1 (b) IME DETERMINATIONS.—Section 1886(d)(5)(B)
 2 of such Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by
 3 adding at the end the following new clause:

4 “(x)(I) The provisions of subpara-
 5 graph (I) of subsection (h)(4) shall apply
 6 under this subparagraph in the same man-
 7 ner as they apply under such subsection.

8 “(II) In determining the hospital’s
 9 number of full-time equivalent residents
 10 for purposes of this subparagraph, all the
 11 time spent by an intern or resident in an
 12 approved medical residency training pro-
 13 gram in non-patient care activities, such as
 14 didactic conferences and seminars, as such
 15 time and activities are defined by the Sec-
 16 retary, that occurs in the hospital shall be
 17 counted toward the determination of full-
 18 time equivalency if the hospital—

19 “(aa) is recognized as a sub-
 20 section (d) hospital;

21 “(bb) is recognized as a sub-
 22 section (d) Puerto Rico hospital;

23 “(cc) is reimbursed under a reim-
 24 bursement system authorized under
 25 section 1814(b)(3); or

1 “(dd) is a provider-based hospital
2 outpatient department.

3 “(III) In determining the hospital’s
4 number of full-time equivalent residents
5 for purposes of this subparagraph, all the
6 time spent by an intern or resident in an
7 approved medical residency training pro-
8 gram in research activities that are not as-
9 sociated with the treatment or diagnosis of
10 a particular patient, as such time and ac-
11 tivities are defined by the Secretary, shall
12 not be counted toward the determination of
13 full-time equivalency.”.

14 (c) EFFECTIVE DATES; APPLICATION.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided, the Secretary of Health and Human Services
17 shall implement the amendments made by this sec-
18 tion in a manner so as to apply to cost reporting pe-
19 riods beginning on or after January 1, 1983.

20 (2) DIRECT GME.—Section 1886(h)(4)(E)(ii) of
21 the Social Security Act, as added by subsection
22 (a)(1)(B), shall apply to cost reporting periods be-
23 ginning on or after July 1, 2008.

24 (3) IME.—Section 1886(d)(5)(B)(x)(III) of the
25 Social Security Act, as added by subsection (b), shall

1 apply to cost reporting periods beginning on or after
 2 October 1, 2001. Such section, as so added, shall
 3 not give rise to any inference on how the law in ef-
 4 fect prior to such date should be interpreted.

5 (4) APPLICATION.—The amendments made by
 6 this section shall not be applied in a manner that re-
 7 quires reopening of any settled hospital cost reports
 8 as to which there is not a jurisdictionally proper ap-
 9 peal pending as of the date of the enactment of this
 10 Act on the issue of payment for indirect costs of
 11 medical education under section 1886(d)(5)(B) of
 12 the Social Security Act or for direct graduate med-
 13 ical education costs under section 1886(h) of such
 14 Act.

15 **SEC. 5. PRESERVATION OF RESIDENT CAP POSITIONS**
 16 **FROM CLOSED AND ACQUIRED HOSPITALS.**

17 (a) GME.—Section 1886(h)(4)(H) of the Social Se-
 18 curity Act (42 U.S.C. 1395ww(h)(4)(H)) is amended by
 19 adding at the end the following new clauses:

20 “(vi) REDISTRIBUTION OF RESIDENCY
 21 SLOTS AFTER A HOSPITAL CLOSES.—

22 “(I) IN GENERAL.—Subject to
 23 the succeeding provisions of this
 24 clause, the Secretary shall, by regula-
 25 tion, establish a process under which,

1 in the case where a hospital with an
2 approved medical residency program
3 closes on or after the date of enact-
4 ment of the Balanced Budget Act of
5 1997, the Secretary shall increase the
6 otherwise applicable resident limit
7 under this paragraph for other hos-
8 pitals in accordance with this clause.

9 “(II) PRIORITY FOR HOSPITALS
10 IN CERTAIN AREAS.—Subject to the
11 succeeding provisions of this clause, in
12 determining for which hospitals the
13 increase in the otherwise applicable
14 resident limit is provided under such
15 process, the Secretary shall distribute
16 the increase to hospitals located in the
17 following priority order (with pref-
18 erence given within each category to
19 hospitals that are members of the
20 same affiliated group (as defined by
21 the Secretary under clause (ii)) as the
22 closed hospital):

23 “(aa) First, to hospitals lo-
24 cated in the same core-based sta-
25 tistical area as, or a core-based

1 statistical area contiguous to, the
2 hospital that closed.

3 “(bb) Second, to hospitals
4 located in the same State as the
5 hospital that closed.

6 “(cc) Third, to hospitals lo-
7 cated in the same region of the
8 country as the hospital that
9 closed.

10 “(dd) Fourth, to all other
11 hospitals.

12 “(III) REQUIREMENT HOSPITAL
13 LIKELY TO FILL POSITION WITHIN
14 CERTAIN TIME PERIOD.—The Sec-
15 retary may only increase the otherwise
16 applicable resident limit of a hospital
17 under such process if the Secretary
18 determines the hospital has dem-
19 onstrated a likelihood of filling the po-
20 sitions made available under this
21 clause within 3 years.

22 “(IV) LIMITATION.—The aggre-
23 gate number of increases in the other-
24 wise applicable resident limits for hos-
25 pitals under this clause shall be equal

1 to the number of resident positions in
 2 the approved medical residency pro-
 3 grams that closed on or after the date
 4 described in subclause (I).

5 “(vii) SPECIAL RULE FOR ACQUIRED
 6 HOSPITALS.—

7 “(I) IN GENERAL.—In the case
 8 of a hospital that is acquired (through
 9 any mechanism) by another entity
 10 with the approval of a bankruptcy
 11 court, during a period determined by
 12 the Secretary (but not less than 3
 13 years), the applicable resident limit of
 14 the acquired hospital shall, except as
 15 provided in subclause (II), be the ap-
 16 plicable resident limit of the hospital
 17 that was acquired (as of the date im-
 18 mediately before the acquisition),
 19 without regard to whether the acquir-
 20 ing entity accepts assignment of the
 21 Medicare provider agreement of the
 22 hospital that was acquired, so long as
 23 the acquiring entity continues to oper-
 24 ate the hospital that was acquired and
 25 to furnish services, medical residency

1 programs, and volume of patients
 2 similar to the services, medical resi-
 3 dency programs, and volume of pa-
 4 tients of the hospital that was ac-
 5 quired (as determined by the Sec-
 6 retary) during such period.

7 “(II) LIMITATION.—Subclause
 8 (I) shall only apply in the case where
 9 an acquiring entity waives the right as
 10 a new provider under the program
 11 under this title to have the otherwise
 12 applicable resident limit of the ac-
 13 quired hospital re-established or in-
 14 creased.”.

15 (b) IME.—Section 1886(d)(5)(B)(v) of the Social Se-
 16 curity Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second
 17 sentence, as amended by section 3, is amended by striking
 18 “subsections (h)(7) and (h)(8)” and inserting “sub-
 19 sections (h)(4)(H)(vi), (h)(4)(H)(vii), (h)(7), and (h)(8)”.

20 (c) APPLICATION.—The amendments made by this
 21 section shall not be applied in a manner that requires re-
 22 opening of any settled hospital cost reports as to which
 23 there is not a jurisdictionally proper appeal pending as
 24 of the date of the enactment of this Act on the issue of
 25 payment for indirect costs of medical education under sec-

1 tion 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
2 1395ww(d)(5)(B)) or for direct graduate medical edu-
3 cation costs under section 1886(h) of such Act (42 U.S.C.
4 Section 1395ww(h)).

5 (d) NO EFFECT ON TEMPORARY FTE CAP ADJUST-
6 MENTS.—The amendments made by this section shall not
7 effect any temporary adjustment to a hospital’s FTE cap
8 under section 413.79(h) of title 42, Code of Federal Regu-
9 lations (as in effect on the date of enactment of this Act).

○